

**Board of County Commissioners
Agenda Item Summary**

Meeting Date: August 18, 2004
Bulk Item: Yes ☒ No ☐

Division: Board of County Commissioners
Department: **George R. Neugent**

AGENDA ITEM WORDING:

Request approval from the Board of County Commission to post a "No Trespassing" sign on the County right of way referring to the camel back bridge on Watson Blvd. in Tropical Bay Estates.

ITEM BACKGROUND:

This has become a safety issue for the children in the area not only in regards to the vehicle traffic on the bridge but the boat traffic under the bridge.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

County Engineer - yes

TOTAL COST:

BUDGETED: YES ☐ NO ☐

COST TO COUNTY: \$ NA

Source of Funds: _____

REVENUE PRODUCING: YES ☐ NO ☒ **AMT PER MONTH:** **YEAR:**

APPROVED BY: COUNTY ATTY ☒ OMB/PURCHASING ☐ RISK MANAGEMENT ☐

APPROVAL:


Commissioner GEORGE R. NEUGENT
DISTRICT II

DOCUMENTATION: INCLUDED ☒ TO FOLLOW ☐ NOT REQUIRED ☐

DISPOSITION:

AGENDA ITEM # L8

May 24, 2004

Mr. George R. Nugent
County Commissioner
District 2
25 Ships Way
Big Pine Key, FL 33043

Dear Mr. Nugent,

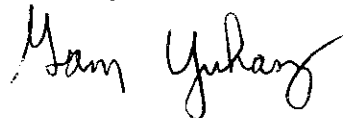
We, the residents/owners in Tropical Bay Estates, request your assistance to deter unauthorized use of the bridge bordering the South edge of Tropical Bay Estates on Watson, the county easement surrounding and beneath the bridge and request these areas be a "No Trespass" posted zone.

We have an influx of some 34+ children in the immediate area and several of the neighbors have witnessed close calls regarding the children/adults swimming beneath the bridge/jumping from the bridge, who were very difficult to retrieve from the water. There is a vertical cut of some 8/9' making it impossible to climb out of the canal at low tide. (See attached pictures reflecting there is no safe passage beneath the bridge). Further, the strong current (approximately 4 to 5 knots), heavy boat traffic and narrow clearance under the bridge make it impossible to avoid hitting a swimmer when operating a boat. With the advent of summer this problem will escalate increasing the probability of a tragedy.

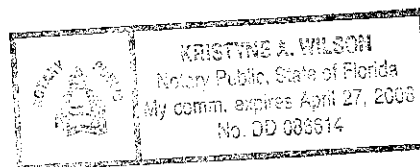
Children are skate boarding on the camel back bridge. As one approaches the bridge from the South the elevation is such that it is impossible for vehicles traveling at posted speeds to see the children SEATED on skate boards. (The braking distance for trucks and buses is frequently more than double that of a passenger vehicle).

Your attention is invited to the attached petition which has been signed by residents/owners in Tropical Bay Estates. We wish therefore to go on record as having brought this safety issue to the your attention.

Sincerely,



Gary Yuhasz
1507 Watson Blvd.
Big Pine Key, FL
(305) 872-1110



*I have personally
appeared GARY YUHASZ
May 24, 2004
Kristyne A. Wilson*

BARRY
from: Tim

Memo

*Pedro - Very good +
Thanks. Forward to
Comm Neugent and
await direction.*

*Collins
06/04/04*

To: Richard Collins
From: Pedro Mercado
Re: Camel Back Bridge Right Of Way No Trespass Request
June 4, 2004

Richard,

You asked me to research 4 issues following a request from Commissioner Neugent. The issues are:

- 1) Can the county legally post the camel back bridge as a No Trespassing Zone?
- 2) Can the county legally post the rights of way by the bridge as a No Trespassing Zone?
- 3) Can the county legally post the area beneath the bridge as a No Swimming/No Trespassing Zone?
- 4) What provision of chapter 316, if any, prohibits skateboarding on a public roadway?

As to issue # 1,

I have not been able to find any cases or statutes either on point or analagous. From an enforcement point of view, I don't believe we could legally enforce a no trespassing zone that encompassed the bridge. By design, the public has unrestricted access to the bridge and it is meant for public use. Another consideration is that this bridge provides access to No Name Key and there isn't an alternative route that could be used. With that in mind, I believe that the public in general would be considered an invitee. At the very least, we would have issues of selective enforcement. Secondly, at what point would a person be considered to be trespassing? Would we be restricting foot traffic only? Could a person on foot stop on the bridge? What about a person on a bicycle? However, see # 3 below. I believe we can still get to where we want to be .

As to issue # 2,

I don't see any legal impediment to posting the right of way as a no trespassing zone. There are numerous cases upholding restrictions on access to public properties. Although most of those cases involve free speech and public fora issues we should have no problem with the basic premise of restricting access to public property. There are also a number of statutes which regulate access to and use of public property. As an example, Florida Statute 337.046 criminalizes unlawful uses of state right of way making it a second degree misdemeanor. To enforce a no trespass zone in this area under Florida statute 810.09 we would need to show;

that the trespass was willful,

was committed by a person who was not invited, licensed or otherwise authorized to be on the property and,

that notice against entering or remaining was given either by actual communication or by posting, fencing, or cultivation.

I spoke with Dave Koppel and although he is not in favor of it for aesthetic as well as wildlife sanctuary issues, my recommendation would be that we fence as well as post the area. Dave suggested that we try posting without the fencing.

As to issue #3,

I contacted the FWC, searched their regulations, searched the Florida statutes and performed a westlaw search and I have been unable to find any legal authority that would allow us to make the area beneath the bridge a no trespassing/no swimming area however maybe we can take the fun out

of it and make it costly. Diving or jumping from a publicly owned bridge is a noncriminal traffic infraction under Florida Statute 316.130(17). We could certainly inform the MCSO and ask that they enforce this provision. Under the statute we are not required to post a sign notifying the public of this provision and case law has borne that out, at least with regards to liability. However, posting a sign may not be a bad idea.

A collateral issue is liability and while case law is in our favor should someone actually drown as a result of jumping from the bridge, there is a case that I found where the municipality was found liable. In that case the bridge was not posted and the injured person had been jumping from the same bridge for years. The injured person was able to testify that the canal was deep enough in past years for him to dive into without impacting the bottom of the canal. The municipality contracted to have some work done on the banks of the canal in the area of the bridge. As a result of the excavation work done in this area, some of the excavated material settled on the floor of the canal and the injured person now impacted the raised canal bottom.. Liability was found because the municipality created a dangerous situation when it allowed the depth of the canal to become shallower and the municipality failed to warn the injured person. Where "a governmental agency creates, either directly or through action of its agents, a danger not readily apparent to one who could be injured as a result of that danger, that agency has actual knowledge of the danger that has been created, and that governmental agency has actual knowledge of the presence of people likely to be injured as a result of that danger, that agency must act responsibly and reasonably under the existing circumstances, and in accordance with acceptable standards of care and common sense, and must take steps to either avert the danger or to warn those at risk that the danger exists." Of course our situation is factually distinguishable because we did not create the danger present at this canal however it may be prudent to place a warning because we have knowledge that a danger exists and that there is the presence of people that may be injured by the danger. Besides if the signs says no jumping or diving and warns of the swift current and steep banks maybe it will discourage some of these kids.

As to issue # 4,

Interestingly enough, only one statute, 316.0085, directly addresses skateboards and then only with regards to liability. The purpose of 316.0085 is to encourage government entities to set aside property for purposes of skateboarding, in-line skating and freestyle bicycling and limit the entities liability should it choose to set aside the property, however, there is some good wording in the statute. Subsection (3) states that "this section does not grant authority or permission for a person to engage in skateboarding, inline skating, or freestyle bicycling on property owned or controlled by a government entity unless such governmental entity has specifically designated such area for skateboarding, inline skating and freestyle bicycling. This can be read in conjunction with Florida Statute 316.2056(12) which states that " no person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device may go upon any roadway except while crossing a street on a crosswalk; and when so crossing such person shall be granted all rights and shall be subject to all of the duties applicable to pedestrians." A violation is a noncriminal infraction. If need be we could pass a county ordinance. F.S. 316.008(1)(s) authorizes regulation of person upon skates, coasters, and other toy vehicles by local authorities. Whichever way we choose to go should be fine.